Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

Vol. 15 OCTOBER 28, 1981 No. 43

This issue contains

T.D. 81-265 Through 81-271
General Notice
Recent Unpublished Customs Service Decisions
Slip Op. 81-85 Through 81-90
International Trade Commission Notices

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price: $2.25 (single copy domestic); $2.85 (single copy foreign). Subscription price: $85.00 a year domestic; $106.25 a year foreign.

U.S. Customs Service

Treasury Decisions

(T.D. 81-265)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of Instruments of International Traffic of a kind specified in section 10.41a of the Customs Regulations.

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: October 7, 1981.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Aluminum Company of America, 200 Park Ave., NY, NY; Federal Ins. Co. D 9/2/81	Sept. 3, 1971	Sept. 3, 1971	New York Seaport $10,000
Balfour MacLaine International, LTD and its food Divisicn, Wall Street Plaza, New York, NY; Federal Ins. Co.	Aug. 12, 1981	Aug. 13, 1981	New York Seaport $10,000
Columbia LNG Corp., 20 Montchanin Rd., Wilmington, DE; St. Paul Fire & Marine Ins. Co. D 8/20/81	Sept. 16, 1975	Sept. 26, 1975	Detroit, MI $10,000
Contract Marine Carriers, Inc., 23 Broad St., Charleston, SC; U.S. Treasury Bill (PB 1/31/80) D 6/17/81 [1]	June 17, 1981	June 17, 1981	Charleston, SC $10,000
Forex Chemical Corp., 13 Sunflower Ave., P.O. Box 159, Paramus, NJ; Federal Ins. Co. D 9/4/81	July 26, 1977	July 27, 1977	New York Seaport $10,000

See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
T. H. Gonzalez, 662 Quarry St., Eagle Pass, TX; Washington International Ins. Co.	Aug. 6, 1981	Aug. 11, 1981	Laredo, TX $10,000
R. J. Kunik & Co., Inc., 1 Bala-Cynwyd Plaza, Bala-Cynwyd, PA; The Aetna Casualty & Surety Co. D 5/11/81	May 5, 1977	May 6, 1977	Boston, MA $25,000
Pacific Western Airlines, Ltd., Vancouver International Airport, Vancouver, B.C., Canada; Washington International Ins. Co.	Feb. 27, 1981	Feb. 27, 1981	Seattle, WA $10,000
Pan Atlantic Shipping Ltd., 290 Nye Ave., Irvington, NJ; Peerless Ins. Co.	July 31, 1981	Aug. 3, 1981	New York Seaport $10,000
Perez & Cia. de Puerto Rico, P.O. Box 10084, Santurce PR; Puerto Rican American Ins. Co. D 9/28/81	Sept. 26, 1980	Sept. 26, 1980	San Juan, PR $25,000
Star Nederland B.V., 3529 Whitebrook Plaza, Memphis, TN; St. Paul Fire & Marine Ins. Co. D 8/14/81	Sept. 25, 1980	Sept. 25, 1980	New Orleans, LA $10,000
Uiterwyk Corp., 3105 W. Waters Ave., Tampa, FL; Ins. Co. of North America (PB 3/31/77) D 8/5/81[2]	Aug. 4, 1981	Aug. 5, 1981	Tampa, FL $10,000

[1] Surety is American Manufacturers Mutual Ins. Co.
[2] Surety is Fidelity & Deposit Co. of MD.

BON-3-10

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 81-266)

Rider to Private Carrier's Bond (CF 3588) To Implement T.D. 81-243

The Customs Service eliminated certain requirements applicable to private carriers of bonded merchandise by T.D. 81-243 (46 F.R. 45600). A person who desires private carrier status is no longer required to be the proprietor for Customs bonded warehouse. Before T.D. 81-243, a private bonded carrier was allowed only to move merchandise (1) from the place where the merchandise was imported to the private carrier's bonded warehouse, or (2) from the private carrier's bonded warehouse to another bonded warehouse if the merchandise was to be exported. Those requirements which limited the types of movements performed by private bonded carriers were eliminated by T.D. 81-243.

The Customs Service is revising the Private Carrier's Bond (CF

3588) to reflect the changes in the Customs Regulations made by T.D. 81–243.

In any new bond filed with the Customs Service on or after October 14, 1981, the words "to its Customs bonded warehouse(s) at the port(s) of ———— ," in the first whereas clause may be lined out by the bond obligors before they submit the executed bond to the Customs Service for approval. The words in condition 5 of the bond "from his Customs bonded warehouse to another Customs bonded warehouse for physical deposit, or if for exportation shall transport his own merchandise under bond from his Customs bonded warehouse to a Customs bonded warehouse at the port of exportation" do not apply to any movement made on or after October 14, 1981, the effective date for T.D. 81–243.

Dated: October 8, 1981.

BON–1–03

GEORGE C. STEUART,
(For Marilyn G. Morrison,
Director, Carriers, Drawback and Bonds Division).

(T.D. 81–267)

(521854)

Three-Wheel All-Terrain Vehicles; Change of Practice Withdrawn

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed change of practice.

SUMMARY: This document gives notice that the Customs Service is withdrawing a proposed change of practice concerning the tariff classification of three-wheel all-terrain vehicles. After reconsideration of the matter, Customs will continue the established and uniform practice of classifying the subject vehicles under the provision for other motor vehicles (except motorcycles) for the transport of persons or articles, in item 692.10, Tariff Schedules of the United States.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Classification and Value Division, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, D.C. 20229 (202–566–8181).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 28, 1980, Customs published a notice in the Federal Register (45 FR 79221), to advise the public that it was reviewing an

established and uniform practice concerning the tariff classification of three-wheel all-terrain vehicles. Customs currently classifies the subject vehicles under the provision for other motor vehicles (except motorcycles) for the transport of persons or articles, in item 692.10, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). The proposed change of practice, if adopted, would have resulted in the reclassification of those vehicles under the provision for motorcycles in item 692.50, TSUS, at a higher rate of customs duty.

Upon request, an extension of time to February 27, 1981, within which to submit comments on the proposal was granted, and a notice to that effect was published in the Federal Register on January 12, 1981 (46 FR 2766).

Only one comment was received in response to the proposed change of practice. The comment was in opposition to the proposal.

WITHDRAWAL OF PROPOSED CHANGE OF PRACTICE

The essence of Customs position that precipitated the proposed change of practice was that a three-wheel all-terrain vehicle is a type of motorcycle and, as such, is properly classifiable under the *eo nomine* provision for motorcycles, item 692.50, TSUS. However, after study of the comment received and further reconsideration of the matter, Customs has concluded that the subject vehicles have been, and should continue to be, properly classified under item 692.10, TSUS, as other motor vehicles (except motorcycles) for the transport of persons or articles. The legal rationale for that position is articulated fully in a letter dated June 26, 1981, addressed to the Area Director of Customs, New York Seaport (CLA–2 CO:R:CV:G/068246 JAS), which is reproduced as an appendix to this document. Accordingly, the subject proposed change of practice is withdrawn.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations Control Branch, U.S. Customs Service. However, other Customs personnel participated in its development.

Approved: August 26, 1981.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: August 26, 1981.

JOHN P. SIMPSON
(For John P. Simpson, Assistant Secretary of the Treasury).

[Published in the Federal Register, Oct. 19, 1981 (46 FR 51356)]

U.S. DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, June 26, 1981.

AREA DIRECTOR OF CUSTOMS,
New York Seaport,
New York, N.Y.

DEAR SIR: This is in response to your memorandum of August 8, 1979 (CLA-2-06-S:C:DI-02 203), which set forth your views on whether an established and uniform practice (19 U.S.C. 1315(d)), exists in the classification of certain three-wheeled all-terrain cycles (ATC) from Japan. A notice proposing to change the practice of classifying ATCs under the tariff provision for other motor vehicles used to transport persons or articles, in item 692.10, Tariff Schedules of the United States (TSUS), was published in the Federal Register on November 28, 1980 (45 FR 79221). One comment was received in response thereto. Our position on the matter is hereinafter set forth.

These three-wheeled vehicles feature a T-shaped chassis and resemble a motorcycle but with two rear wheels. All three wheels are fitted with fat donut-type 22×11 tires which enable the vehicle to maneuver easily on all types of terrain. Their one cylinder engines range in size from 72cc to 105cc, and produce around 8hp. The ATC utilizes a handlebar for steering and has a seat that is straddled by the driver. The ATC does not normally exceed 302 lbs. in weight.

By way of background, in a letter dated July 15, 1970 (MFG 433.7/005618), published as ORR 760–70, three-wheeled all-terrain vehicles were held to be classifiable under the tariff provision for other motor vehicles (except motorcycles) for the transport of persons or articles, in item 692.10, TSUS. However, in a letter dated June 20, 1977 (049919), the Electric Trike, a battery-powered three-wheeled vehicle, was held to be classifiable under the tariff provision for motorcycles, in item 692.50 TSUS. In another letter dated April 12, 1979 (057874), two models of the Honda ATC were held to be similarly classifiable.

In our cases 049919 and 057874, great weight was placed on *The Explanatory Notes to Brussels Nomenclature*, in holding three-wheeled vehicles to be classifiable in item 692.50, TSUS, and also in the National Highway Traffic Safety Administration (NHTSA) definition of a motorcycle as a "two-wheeled vehicle with motive power or a three-wheeled vehicle with motive power." It should be noted that the courts have held *Brussels* to be a useful source of legislative history with respect to the tariff schedules when a sufficient nexus can be found between it and the tariff schedules, that is, the order, language and phraseology of *Brussels* does not differ from the provisions of the

tariff schedules. See *W. R. Filbin and Co., Inc.* v. *United States*, 63 Cust. Ct. 200, CD 3897 (1969), *M. Hohner Inc.* v. *United States*, 63 Cust. Ct. 496, CD 3942 (1969), and related cases. In this regard, the line heading to Explanatory Note 87.09 reads MOTOR-CYCLES, AUTO-CYCLES AND CYCLES FITTED WITH AN AUXILIARY MOTOR WITH OR WITHOUT SIDE-CARS: SIDE-CARS OF ALL KINDS. This heading is far broader in scope than item 692.50, TSUS, which covers only motorcycles. There is doubt, therefore, that a clear nexus exists between these two provisions, such that a legislative intent to classify three-wheeled vehicles, not having the character of motor vehicles, in item 692.50, TSUS, is not manifest.

The NHTSA definition of the term "motorcycle" is not persuasive for tariff purposes inasmuch as it is a definition dealing with non-tariff matters. See *International Spring Mfg. Co.*, v. *United States*, 85 Cust. Ct. 5 CD 4862 (1980). Likewise, it is noted that the Society of Automotive Engineers (SAE) recognizes the existence of three-wheeled motorcycles, in designating them by "a vertical plane which passes through the center line of the single wheel and through the mid-point of the two wheels sharing the same axis of rotation." See SAE Designation J 213a. The SAE establishes various product and material standards in the automobile and steel industries. While Customs recognizes SAE designations for some purposes (i.e., drawback), such designations are guidelines only and are not persuasive as to common meaning of a term for tariff purposes.

The issue, in our opinion, is whether the ATC is embraced within the *eo nomine* designation for motorcycles, in item 629.50, TSUS. The meaning of a word in a tariff provision is determined by its "common meaning," which is presumed to be its commercial meaning. See *United States* v. *C. J. Tower and Sons*, 48 CCPA 87, CAD 770 (1961).

Common meaning is to be determined as a matter of law, for which purpose recourse may be had to lexicographic sources such as dictionaries, scientific authorities, testimony of competent witnesses and other reliable sources of information. See *Trans-Atlantic Company* v. *United States*, 60 CCPA 100, CAD 1088 (1973). Most lexicographic authorities define the term "motorcycle" to mean a motorized two-wheeled vehicle, or one having a third wheel only when a sidecar is attached. In none of the motorcycle trade magazines, brochures or other promotional literature of which we are aware, is the ATC characterized as a motorcycle. See *Audiovox Corp.* v. *United States*, Slip Op. 81-11 (1981). The Motorcycle Industry Council, a trade organization representing domestic motorcycle distributors (Yamaha, Suzuki, and Honda), all of whom distribute the ATC, informs us that it is bought, sold and referred to in the trade as an all-terrain cycle. It is not sold as a motorcycle. Most dealerships which we have infor-

mally surveyed in this area have separate sales departments for ATCs. The standard street motorcycle, off-highway dirt or trail bike, and moped are sold in a separate department.

In determining whether an article is embraced within an *eo nomine* designation, its use may be considered in order to establish its identity. See *United States* v. *Quon Quon Company*, 46 CCPA 70, CAD 699 (1959), and related cases. While motorcycles have both on and off-highway uses for transportation, recreation and competition, the ATC is strictly an off-highway cycle or vehicle. The trend in many midwestern states is to market the ATC as an off-road utility vehicle suitable for a wide variety of farming, commercial and industrial purposes. It is suitable for hauling small farm wagons, to accommodate a snow plow, to pull stumps etc.

Classification should be determined largely by a consideration of the design, character, and purpose of the machine. See *Giddings & Lewis Machine Tool Co., et. al.* v. *United States*, 61 Cust. Ct. 284, CD 3612 (1968).. Mechanically, there are various similarities and differences between motorcycles and ATCs. Both have what is known as triple tree front suspensions and rigid axle rear suspensions. The motorcycle has shock absorbers while the ATC has none. Both have manual or automatic transmissions with no reverse gear. Both have interlocking brakes, either disc or drum and shoe. These brakes are either foot and/or handlebar activated. However, while both the motorcycle and ATC have chain driven sprockets (the rear wheels are driven off a sprocket inside the engine by means of a chain) we are informed that many motorcycle models are shaft-driven as a passenger automobile would be. However, the ATC is never shaft-driven because of the need for positive drive on both rear wheels at the same time. This, together with high flotation tires, gives the ATC its all-terrain capability, in much the same fashion as a four-wheel drive jeep. Also, whole both the motorcycle and the ATC possess internal combustion, gas fueled engines, the motorcycle engine is generally more powerful, that is, it ranges in size up to 1300cc. This is because the standard motorcycle has need for high rpm for speed purposes and does not generate torque or thrust as does the ATC. The ATC, on the other hand, has a one cylinder engine which ranges in size from 115 to 400cc. These low rpm engines generate the high torque needed at low speeds resulting in the increased pulling capacity for which the ATC is becoming increasingly popular.

In considering this matter we are mindful that while the meaning of an *eo nomine* designation is determined as of the effective date of the tariff statute it will include all articles subsequently created which fairly come within its scope. See *Hoyt, Stepston et. al.* v. *United States*, 52 CCPA 101, CAD 865 (1965). However, it is equally true

354-809 O - 81 - 2

that for tariff purposes technological advancements, expanded markets and their effect on consumer expectations must be considered. While the evidence is by no means conclusive, it is our opinion that the ATC is not embraced within the common meaning of the term "motorcycle."

Consequently, three-wheeled all-terrain cycles of the type herein described are properly classifiable under the tariff provision for other motor vehicles of a type used to transport persons or articles, in item 692.10, TSUS. Our letter of April 12, 1979 (057874), is revoked.

Sincerely,

HARVEY B. FOX,
Director, Classification and Value Division.

(19 CFR Part 134)

(T.D. 81-268)

Specific Country of Origin Marking Requirements for Imported Compressed Gas Cylinders

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Ruling; Policy statement under section 134.42, Customs Regulations.

SUMMARY: Customs has learned that the country of origin on imported compressed gas cylinders, classified under items 640.05 and 640.10, Tariff Schedules of the United States, is sometimes marked by being printed on easily removed adhesive backed paper stickers. This document gives notice that, with certain, stated exceptions, Customs will require the subject cylinders to be permanently and legibly marked with the country of origin by die stamping, molding, etching, raised lettering, or an equally permanent method of marking.

DATE: This ruling shall be effective as to merchandise entered, or withdrawn from warehouse, for consumption on or after (90 days from date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Fred Burns-O'Brien, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), provides that every imported article of foreign origin, or its container,

shall be legibly and conspicuously marked to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. That section also authorizes the Secretary of the Treasury to require specific methods of marking articles.

Part 134 of the Customs Regulations (19 CFR Part 134), sets forth the regulations implementing the country of origin marking requirements of 19 U.S.C. 1304(a), together with certain marking provisions of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). Section 134.41(a), Customs Regulations (19 CFR 134.41(a)), states that as a general rule marking requirements are best met by marking that is "worked into the article" at the time of manufacture. Section 134. 42, Customs Regulations (19 CFR 134. 42), provides that specific methods of marking merchandise with its country of origin may be required by the Commissioner of Customs in accordance with 19 U.S.C. 1304(a), and that notices of such rulings shall be published in the Federal Register and the CUSTOMS BULLETIN.

Customs has learned that the country of origin marking requirements are not being applied uniformly to imported compressed gas cylinders, classified under items 640.05 and 640.10, TSUS. Sometimes, the name of the country of origin on those articles is marked by being printed on easily removed adhesive-backed paper stickers. Permanent marking of the subject cylinders is needed to ensure that an ultimate purchaser in the United States will be aware of the country of origin of the articles.

SPECIFIC METHOD OF MARKING REQUIRED

To provide for uniformity of application of the country of origin marking requirements of 19 U.S.C. 1304, and to clarify those marking requirements, imported compressed gas cylinders shall be marked with their country of origin as follows:

1. Compressed gas cylinders, imported individually or in bulk by a distributor for resale to ultimate purchasers in the United States, shall each be permanently and legibly marked with the country of origin by die stamping, molding, etching, raised lettering, or an equally permanent method of marking.

2. There are two exceptions from the general country of origin marking requirement stated above.

(a) If a compressed gas cylinder is imported directly from a foreign supplier for use by the importer and not intended for sale in its imported or any other form, the cylinder may be excepted from country of origin marking under 19 U.S.C. 1304(a)(3)(F).

(b) If a compressed gas cylinder is ordered directly from a foreign supplier by a contractor or other ultimate purchaser in the United States who will use it and not offer it for resale, and if Customs is

satisfied that the cylinder was manufactured in the country named in the invoice, it may be excepted from country of origin marking under 19 U.S.C. 1304 (a)(3)(H).

AUTHORITY

This notice is being published in accordance with section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), and section 134.42, Customs Regulations (19 CFR 134.42).

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations Control Branch, Office of Regulations and Rulings. However, personnel from other Customs offices participated in its development.

Dated: October 9, 1981.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

[Published in the Federal Register Oct. 19, 1981 (46 FR 51243)]

(T.D. 81-269)

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

QUARTER BEGINNING: OCTOBER 1, 1981 THROUGH DECEMBER 31, 1981

Country	Name of currency	U.S. dollars
Australia	Dollar	$1.1430
Austria	Schilling	.061200
Belgium	Franc	.026261
Brazil	Cruziero	.009388
Canada	Dollar	.809600
China, P.R.	Renminbi Yuan	.564366
Denmark	Krone	.136687
Finland	Markka	.222941

Country	Name of currency	U.S. dollars
France	Franc	.179565
Germany	Deutsche Mark	.430478
Hong Kong	Dollar	.162470
India	Rupee	.109890
Iran	Rial	.012353
Ireland	Pound	1.5675
Italy	Lira	.000845
Japan	Yen	.004290
Malaysia	Dollar	.429646
Mexico	Peso	.039612
Netherlands	Guilder	.387447
New Zealand	Dollar	.8225
Norway	Krone	.169377
Philippines	Peso	.125039
Portugal	Escudo	.015314
Republic of South Africa	Rand	1.0500
Singapore	Dollar	.471698
Spain	Peseta	.010361
Sri-Lanka	Rupee	.048792
Sweden	Krona	.178603
Switzerland	Franc	.507872
Thailand	Baht (Tical)	.043384
United Kingdom	Pound	1.8310
Venezuela	Bolivar	.232612

(LIQ-03-01 O:C:E)

Dated: October 1, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

(T.D. 81-270)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372 (c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published

for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
September 28–October 1, 1981	$0.000175
October 2, 1981	.000172
Chile peso:	
September 28–October 2, 1981	$0.025575
Colombia peso:	
September 28–October 1, 1981	$0.017762
October 2, 1981	.017715
Greece drachma:	
September 28, 1981	$0.017825
September 29, 1981	.017544
September 30, 1981	.017437
October 1, 1981	.017361
October 2, 1981	.017513
Indonesia rupiah:	
September 28–October 2, 1981	$0.001582
Israel shekel:	
September 28, 1981	$0.074850
September 29–October 2, 1981	.074074
Peru sol:	
September 28–October 2, 1981	$0.002212
South Korea won:	
September 28–October 2, 1981	$0.001468

(LIQ–03–01 O:C:E)

Dated: October 2, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

(T.D. 81–271)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(C), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to

convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
September 28, 1981	Quarterly
September 29, 1981	$0.061958
September 30, 1981	Quarterly
Brazil cruziero	
September 28–30, 1981	$0.009388
Hong Kong dollar:	
September 28, 1981	$0.162707
September 29, 1981	.163399
September 30, 1981	.162933
India rupee	
September 28, 1981	$0.108696
September 29–30, 1981	.109649
Republic of South Africa rand:	
September 28–29, 1981	$1.0472
September 30, 1981	1.0470
Sri-Lanka rupee:	
September 28–30, 1981	$0.048792
Sweden krone:	
September 28, 1981	$0.177431
September 29, 1981	.178731
September 30, 1981	.178412
Switzerland franc:	
September 28, 1981	Quarterly
September 29, 1981	$0.509424
September 30, 1981	.506329
Thailand baht (tical):	
September 28–30, 1981	$0.043384
United Kingdom pound:	
September 28, 1981	$1.7790
September 29, 1981	1.7945
September 30, 1981	1.8030

(LIQ–03–01 O:C:E)

Dated: September 30, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

U.S. Customs Service

General Notice

(19 CFR Part 177)

(T.D. 81-214)

Tariff Classification: Ornamented and Not Ornamented Wearing Apparel

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice announcing the application of a court decision to the tariff classification of certain merchandise; correction.

SUMMARY: This document corrects a notice concerning the manner in which the Customs Service will apply the principles announced by the U.S. Court of Customs and Patent Appeals in *The Ferriswheel* v. *United States*, C.A.D. 1260, to certain specified garments, which was published as T.D. 81-214 in the Federal Register on August 21, 1981 (46 FR 42446).

FOR FURTHER INFORMATION CONTACT: Robert Joseph Pisani, Regulations Control Branch, U.S. Customs Service (202-566-8237).

The following corrections are made to the notice document:

1. On page 42446, left hand column, the first sentence under the caption "Effective Dates," is corrected to read "The change in classification with respect to western-style shirts, military style and bush/safari garments with epaulets, described below, will be effective after December 21, 1981."

2. On page 42447 the last sentence in the paragraph at the top of the left-hand column, is corrected to read "The classification of such garments will, after December 21, 1981, be determined on the characteristics of each garment."

Dated: October 9, 1981.

STEPHEN PINTER,
Director, Regulations Control
and Disclosure Law Division.

[Published in the Federal Register Oct. 20, 1981 (46 FR 51382)]

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. These copies will be made available at a cost to the requester of $0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through February 2, 1981 are available in microfiche format at a cost of $30.90** ($0.15 per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: October 8, 1981.

B. JAMES FRITZ,
Director,
Regulations Control and Disclosure Law Divison.

Date of decision	File No.	Issue
07-30-81	064831	Classification: PVC glove (705.85)
08-05-81	065267	Classification: down filled garments (380.84, 380.90, 382.81, 382.87, 748.40)

354-809 O - 81 - 3

Date of decision	File No.	Issue
07-28-81	065556	Classification: women's footwear (700.60)
07-23-81	065661	Classification: denim jeans with hammer loop are not considered ornamented for tariff classification purposes
07-31-81	065631	Classification: elastic fabric or powernet (352.80)
07-21-81	065674	Classification: reinforced paper and disposable surgical gowns (253.35, 256.87)
07-28-81	065681	Classification: sugar beet planting system (662.20, 664.10, 678.20)
07-23-81	065755	Classification: windmill (660.85, 660.97, 870.40)
07-28-81	065812	Classification: domestic home gardening irrigation system (662.50, 870.40)
07-28-81	065836	Classification: postal zip code separator (678.50)
08-26-81	065937	Classification: ladies belt buckle (745.45)
08-26-81	065964	Classification: powdered cocoa or chocolate milk mix (183.00, 950.19)
07-29-81	066099	Classification: stainless steel garden tool set (651.39)
07-30-81	066323	Classification: anaerobic waste processors (660.10, 660.42, 660.56, 660.97, 661.12, 661.95, 678.50, 682.60, 685.90, 870.40)
08-13-81	066495	Classification: components to an access flooring system (355.25, 389.50, 657.25, 657.40)
09-17-81	066553	Classification: hand-crochet infants clothing (382.04, 382.78)
07-29-81	066753	Classification: switch-mode inductor/driver transformer assembly (682.60)
08-26-81	066860	Classification: triple-needle stitching on outer leg seams and crotch do not constitute ornamentation
08-13-81	066982	Classification: canvas basketball shoes (700.60)
07-28-81	066999	Classification: reactor used to break down starch into sugar (661.68)
08-26-81	068022	Classification: toy road racing set (737.95)
08-28-81	068112	Classification: nylon tag fasteners (745.65)
08-19-81	068151	Classification: pedal reflectors (774.60)
09-03-81	068182	Classification: rummy tile game (735.20)
09-03-81	068195	Classification: element control panel for gas stoves (652.75)
09-03-81	068257	Classification: beachcomber footwear (700.60)
09-03-81	068267	Classification: ladies plastic/mesh clogs (700.60)
09-09-81	068362	Classification: ski golves (735.06)
08-05-81	068365	Classification: ladies casual open-toe, ankle strap, low wedge shoe (700.60)
08-05-81	068366	Classification: ladies casual shoe (700.60)
07-21-81	068388	Classification: accumulators used in hydraulic systems (681.39)
08-26-81	068434	Classification: electronic detection unit for removing foreign matter from freshly picked vegetables (666.25)
07-28-81	068453	Classification: chemical processing equipment (661.68)
08-13-81	068454	Classification: bicycle trainer wheels (657.25)
08-26-81	068464	Classification: plastic lampshade covers (772.35)

Date of decision	File No.	Issue
07–31–81	068493	Classification: ladies casual shoe (700.60)
08–19–81	068529	Classification: lip and eyeliner brushes (750.60)
09–03–81	068568	Classification: molded translucent plastic footwear bottom and strap (700.56)
09–17–81	068683	Classification: footwear (700.60)
08–06–81	068741	Classification: cotton pre-washed denim jeans (382.33 380.39)
07–30–81	068758	Classification: ruling not retroactive with respect to entries made subsequent to decision on difference of opinion: strawberry flavorbase (146.75, 183.05)
08–14–81	068764	Classification: women's casual shoe (700.64 through 700.71)
09–17–81	068818	Classification: ski glove liners (735.06)
07–28–81	068822	Classification: wooden toys and puzzles (735.20, 737.55)
07–23–81	068854	Classification: yogurt flavorbases (146.85)
09–17–81	068906	Classification: plastic strips used to secure a fruit tree bud to a rootstock (389.62)
08–26–81	068927	Classification: pedal reflectors (774.60)
08–19–81	068932	Classification: children's "character" footwear (700.60)
09–10–81	068980	Classification: nylon knapsack (706.28)
08–19–81	068991	Classification: beverage concentrate and beverage reconstituted concentrate (166.40, 183.05)
09–08–81	105253	Vessels: dutiability of pleasure boats entered by a nonresident intending to take up residence in the U.S. (812.30, 696.05, 696.10, 800.00)
09–14–81	105287	Vessels: use of a foreign-flag vessel to transport tank trucks containing chemicals to a port in Puerto Rico from other ports in the U.S. violates 46 U.S.C. 883.
09–15–81	105310	Instruments of International Traffic: Dutiable status of tank containers used in transporting petroleum from the U.S. west coast to Hawaii, Guam or the Philippines (640.20, 640.30, 832.00)
08–13–81	542467	Value: deduction of C.I.F. duty-paid charges under transaction value
09–14 81	542480	Value: valuation of data processing equipment manufactured by foreign subsidiaries of a U.S. parent corporation
09–15–81	542489	Value: appraisement of steam turbine generators on the basis of U.S. value, represented by the contract price to the ultimate purchaser, less the appropriate statutory deductions
09–04–81	542529	Value: calculation of the appraised dutiable value and domestic forfeiture value of certain merchandise
09–08–81	542542	Value: export value may exist if purchaser is not located in U.S. and if merchandise is destined for the U.S. when sold

Date of decision	File No.	Issue
08-25-81	542561	Value: foreign inland freight charge is dutiable under transaction value unless merchandise is purchased ex-factory
07-27-81	800529	Classification: pesticide products (408.38)
08-05-81	801000	Classification: electronic sign kits with cabinets (688.45)
08-05-81	801007	Classification: plastic coated knit fabrics (337.20, 355.81, 353.50)
08-05-81	801013	Classification: magnetic mobile inspection light and lantern (688.15, 688.45)
08-19-81	801018	Classification: cabin tents with sewn-on labels (386.09)
08-06-81	801019	Classification: gloves (704.32, 705.35)
08-26-81	801020	Classification: scale model construction kit of prototype motorcycle (737.09)
08-05-81	801023	Classification: profiled steel tubes (609.80, 610.30, 610.31, 610.32, 610.39, 610.49)
08-05-81	801026	Classification: printed shade cards (273.35)
08-13-81	801029	Classification: iron valve castings used in fire protection sprinkler systems
08-05-81	801031	Classification: Natural L—Tryptophane (425.04)
08-05-81	801035	Classification: woven fabric made from carbon fibers (339.10)
08-18-81	801036	Classification: acrylic men's and women's embroidered knit sweaters (380.04, 382.04)
08-05-81	801045	Classification: sanitary napkin machine (678.50)
08-05-81	801057	Classification: plastic articles with self adhesive bases (772.15, 790.55)
08-18-81	801066	Classification: waterproof roofing material (774.55)
08-06-81	801068	Classification: PVC roofing material reinforced with fiberglass scrim (774.55)
08-24-81	801073	Classification: tractors (692.34)
08-18-81	801089	Classification: harvade, a growth regulant and herbicide (429.60)
08-18-81	801098	Classification: man's woven synthetic jacket (380.04)
08-05-81	801101	Classification: copper cable scrap (612.10)
08-05-81	801102	Classification: ski glove liner (735.06)
08-11-81	801104	Classification: garden swing for children (727.55)
08-18-81	801119	Classification: wooden shelf (206.98)
08-28-81	801143	Classification: men's briefs and athletic supporter (376.24, 378.05)
08-19-81	801145	Classification: polyester material (389.62)
08-31-81	801166	Classification: hand crocheted cotton sweaters (382.00)
08-26-81	801173	Classification: shoes of canvas upper and rubber sole (700.59, 700.64)
08-28-81	801074	Classification: tissue soap or flat sheets of soap (466.10)
08-06-81	801080	Classification: women's casual shoe (700.51, 700.52, 700.53, 700.56, 700.57, 700.59)
08-19-81	801091	Classification: emergency spotlight (688.45)

Date of decision	File No.	Issue
08–05–81	801094	Classification: model remote control tank (685.60)
08–18–81	801099	Classification: bar code reader wand and dot matrix printer mechanism (676.52)
08–24–81	801114	Classification: tractor chassis (692.34)
08–18–81	801120	Classification: marble plate with wood stand (514.81)
08–18–91	801124	Classification: wooden shadow box (206.98)
09–03–81	801133	Classification: toy figure cartoon character (737.80)
09–03–81	801160	Classification: tractor models (692.34)
08–19–81	801168	Classification: bicycle rim strips (732.42)
08–19–81	801170	Classification: sun visor (382.33)
08–26–81	801177	Classification: pedicure pads (772.15)
08–26–81	801178	Classification: men's polyester shirt (380.04)
09–03–81	801184	Classification: tractor models (692.34)
08–31–81	801230	Classification: men's casual shoe (700.51, 700.52, 700.53, 700.56)
08–28–81	801191	Classification: ladies' knit shirt (382.78)
09–03–81	801195	Classification: cotton woven jacket (380.00)
08–24–81	801198	Classification: hair dressing appliance (684.50)
08–24–81	801224	Classification: infant boys' swim trunks (382.81)
08–24–81	801237	Classification: steel oil well casings (610.39, 610.40)
09–03–81	801245	Classification: wooden blanket handles (207.00)
09–03–81	801249	Classification: man's shirt (380.00)
09–01–81	801257	Classification: automated assembly equipment (678.50, 664.10, 683.95)
08–31–81	801270	Classification: mincer: handtool (651.47, 651.55)
09–03–81	801272	Classification: boys' knit shirt (380.00)
09–08–81	801301	Classification: soap/nail brush with plasic bracket (446.15, 772.15)

Decisions of the United States Court of International Trade

(Slip Op. 81–85)

PPG INDUSTRIES, INC., PLAINTIFF *v.* UNITED STATES; MALCOLM T. BALDRIGE, SECRETARY OF COMMERCE; LIONEL H. OLMER, UNDER SECRETARY FOR INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE; DEFENDANTS

Before RAO, *Judge.*

Court No. 81–6–00733

On Defendants' Cross-Motion To Dismiss and Plaintiff's Opposition Thereto

[Defendants' cross-motion to dismiss granted.]

(Decided September 28, 1981)

Eugene L. Stewart (*Paul W. Jameson* and *Jeffrey S. Beckington* on the brief) for the plaintiff.

Stuart E. Schiffer, Acting Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, (*Francis J. Sailer* on the briefs) for the defendants.

RAO, *Judge:* This case involves the periodic review of an antidumping duty order on glass from Taiwan pursuant to section 751 of the Tariff Act of 1930, amended by the Trade Agreements Act of 1979, P.L. 96–39, 93 Stat. 144 (19 U.S.C. section 1675). The new antidumping duty provisions require that the Department of Commerce (hereinafter Commerce) conduct a periodic review, at least once during each calendar year, of previously issued antidumping orders in order to ascertain the amount of antidumping duties which should be assessed against relevant imports in the previous year and to establish the basis on which estimated deposits of antidumping duties will be collected during the ensuing year.

Commerce is required by the provisions of 19 U.S.C. § 1675(d) when it conducts an annual review, on the request of an interested party, to hold a hearing in accordance with 19 U.S.C. § 1677c(b), which requires notice in the Federal Register and a transcript which shall be made available to the public.

Commerce has promulgated regulations which provide that "[a] disclosure may be made, generally about 30 days prior to the date of the redetermination is due for publication, on request by interested parties * * * to the proceeding, * * * at which time written and oral views may be presented. *See* 19 CFR § 353.53(d), 45 Fed. Reg. 8182, 8205 (1980).

Plaintiff requested a disclosure conference on May 11, 1981. It was subsequently informed by the International Trade Administration (hereinafter ITA) officer handling the case that a disclosure conference in this case was not necessary since there had been no shipments of clear sheet glass from Taiwan for the period of July 1, 1979 though July 31, 1980, and the cash deposit margins preliminarily determined were arrived at based on the figures in the master list compiled by the Treasury Department for the period of July 1, 1974 to June 30, 1976.

Plaintiff's counsel renewed plaintiff's requests for a disclosure conference which were formally denied on May 19, 1981. On June 8, 1981, plaintiff filed a summons and complaint in this court requesting that a writ of mandamus be issued to compel the ITA to hold a disclosure conference as requested and also filed a motion for an order to show cause, a motion for a preliminary injunction, and a motion to shorten the time for defendants to answer the complaint. On June 19, 1981 defendants filed their opposition to plaintiff's motion for a preliminary injunction and a cross-motion to dismiss the complaint for failure to state a cause of action.

On July 6, 1981, Judge Landis denied plaintiff's motion for a prelim-

inary injunction and plaintiff's motion to shorten defendants' time to answer to complaint, but continued the motion to dismiss. *See* 1 CIT —, Slip Op. 81–59 (July 6, 1981). Plaintiff's opposition to defendants' cross-motion to dismiss was filed on July 23, 1981 and defendants' reply thereto was filed on August 6, 1981.

I

It is plaintiff's contention that this court has jurisdiction to require the ITA to hold the requested disclosure conference pursuant to 28 U.S.C. § 1581(i) which confers subject matter jurisdiction of any civil action commenced against the United States or its agencies arising from any law of the United States dealing with imports in this court. Additionally, plaintiff asserts that mandamus is an appropriate remedy to require the ITA to hold the requested disclosure conference as "final agency action," otherwise the ITA will continue to make its determination without ever having given plaintiff its requested disclosure.

Defendants claim that Commerce's decision on whether to grant disclosure is discretionary in that the regulations are not mandatory, but merely permissive; that the decision is a procedural consideration and that ITA's negative response to plaintiff's request is reviewable, if at all, in conjunction with review of its final determination as to the antidumping duties imposed or proposed in its annual review.

We agree that Commerce's decision was an interlocutory procedural decision reviewable under a section 516A review of the final results of the section 751 administrative review and should not be reviewed by this court at this time. A determination, other than those reviewable under 19 U.S.C. § 1516a(a)(1) by the administering authority under section 1675 for a twelbe month periodic review of an antidumping duty order is reviewable under 19 U.S.C. § 1516a(a)(2). All administrative or procedural actions taken by Commerce in the course of that review are interlocutory in nature. In the interests of efficient and expedient agency action, all matters having to do with the final determination should be reviewed at the same time, and not in a piecemeal fashion.

It may well be that plaintiff will find the determinations of the ITA with respect to the annual review satisfactory for the protection of its interests. In that event, Commerce's refusal to grant a disclosure conference would be, at most, error without injury. If, on the other hand, plaintiff appeals Commerce's determination with respect to the annual review to this court, that is the proper time to review all procedural and interlocutory decisions made with respect to that annual review.

The legislative history of the Customs Courts Act of 1980 lends support to this holding. Report No. 96-1235 of the House Committee on the Judiciary on H. R. 7540, 96th Cong., 2d Sess. (1980) states in part:

> The Committee intends that any determination specified in section 516A of the Tariff Act of 1930, or any preliminary administrative action which, in the course of proceeding, will be, directly or by implication, incorporated in or superseded by any such determination, is reviewable exclusively as provided in section 516A * * *.

Thus, while Congress contemplated that there would be some civil actions relating to an antidumping duty proceeding which could be heard pursuant to 28 U.S.C. § 1581(i), it intended that this section should not be used to permit the appeal of a procedural determination, but rather, that all procedural considerationss hould be decided by this court when the final agency determination is made.

II

Mandamus is an inappropriate remedy in this case. In *Canadian Tarpoly Co.* v. *U.S. International Trade Commission*, 640 F. 2d 1322, 1325 (1981), the Court of Customs and Patent Appeals reviewed the use of mandamus, stating:

> Mandamus is an extraordinary remedy, available only in extraordinary circumstances and when no meaningful alternatives are available [Citations omitted] * * * [A] court's power to issue a mandamus under the All Writs Act (28 U.S.C. § 1651(a)) is limited to situations in which such action is necessary or appropriate in aid of its jurisdiction.

Mandamus is inappropriate in the instant case as the cause of action which plaintiff attempts to bring is premature.

Additionally, there are meaningful alternative legal remedies which will be available here. If plaintiff feels adversely affected by the final determination in the final review, plaintiff can appeal to this court. It is well established that the extraordinary writ of mandamus cannot be used as a substitute for appeals. *Bankers Life & Cas. Co.* v. *Holland*, 346 U.S. 379, 383, 74 S. Ct. 145, 148, 98 L.Ed. 106 (1953).

It is therefore ordered and adjudged that defendants' motion to dismiss the complaint is granted, and

Plaintiff's motion for a writ of mandamus is denied.

PAUL P. RAO,
Judge.

Dated: New York, N.Y., September 28, 1981.

354-809 O - 81 - 4

(Slip Op. 81–86)

MELAMINE CHEMICALS, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Before LANDIS, *Judge*.

Court No. 80–6–00878

[Plaintiff's motion to supplement the agency record, denied.]

(Dated September 29, 1981)

Baker & McKenzie (*Bruce E. Clubb* on the brief) for the plaintiff.
J. Paul McGrath, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch (*Francis J. Sailer* on the brief), for the defendant.

LANDIS, *Judge*: In this antidumping action previously instituted pursuant to 19 U.S.C. § 1516a(a)(2)(B) plaintiff moves for an order to supplement the agency record by adding the International Trade Commission ITC) record in Investigation No. 731–TA–16, melamine in crystal form from the Netherlands.

In this action plaintiff has asked the court to review a final negative determination of the Commerce Department. This is one of the three cases involving the dumping of melamine in the United States. On November 13, 1979 Treasury published tentative affirmative determinations in the Austrian and Italian cases and a tentative negative determination in this case involving the Netherlands (44 Fed. Reg 65517). On January 1, 1980 the responsibility for the administration of the antidumping laws' less than fair value determination phase was transferred to the Department of Commerce. On February 26, 1980, Commerce published a Notice that it had found an error in Treasury's computations in the Netherlands case and that there was, in fact, sales at less than fair value. The Tentative Negative Determination was amended to an Affirmative Preliminary Determination (45 Fed. Reg. 12466).

On March 20 and 21, 1980, Commerce issued an Affirmative Final Determination in the three cases. (45 Fed. Reg. 18416, 20151, 20152). Meanwhile, the ITC initiated injury investigations in the Austrian and Italian cases effective January 1, 1980 and an injury investigation in the Netherlands case effective February 26, 1980 (Investigation No. 731–TA–16 (Final), 45 Fed. Reg. 17096). Hearings were held on April 11 and 12, 1980 in Washington.

On May 5, 1980 Commerce amended its original finding and published a Final Negative Determination in the Netherlands case (45 Fed. Reg. 29619). As a result of the withdrawal of the Final Affirmative Determination the ITC made no finding in the Netherlands case but found that there was no material injury in the Austrian and Italian cases (45 Fed. Reg. 31830).

Plaintiff argues that in order to assess the degree of prejudice which it suffered because of Commerce's withdrawal of its Final Affirmative Determination in the Netherlands case it is essential that the agency record to be reviewed by the court include the record of the proceedings before the ITC.

A review of the applicable law indicates that the scope of judicial review of a final negative determination by the Secretary of Treasury or the administrative authority pursuant to 19 U.S.C. § 1673d is whether the determination is supported by substantial evidence on the record or is otherwise not in accordance with law (19 U.S.C. § 1516a(b)(1)(B)). The action under review in this case is the Amended Final Determination of Sales at Not Less Than Fair Value by the administering agency (Department of Commerce) (45 Fed. Reg. 29619). The record for review consists of all information presented to or obtained by the Secretary of Treasury and the administering authority as well as all other items set forth pursuant to 19 U.S.C. § 1516a(b)(2).

The ITC preliminary determination proceedings commenced effective February 26, 1980, the date that the Commerce Department amended Treasury's Tentative Determination of Sales at Not Less Than Fair Value to an affirmative preliminary determination. Commerce's amendment prompted the ITC final investigation pursuant to section 735(b)(2) of the Tariff Act of 1930, as amended (19 U.S.C. § 1673d(b)(2)). On March 21, 1980 Commerce issued its Affirmative Final Determination in the Netherlands case. At this juncture the ITC investigation was continuing and hearings were held subsequently. Pursuant to section 735(b)(2) the ITC had until June 25, 1980 to issue a final determination. However, upon notification of Commerce's amended affirmative final determination to a negative final determination as to the Netherlands the ITC terminated its injury investigation as to that country. *No determination was made with respect to the injury phase of melamine from the Netherlands.*

The termination of the Netherlands investigation was proper and in accordance with the law. Section 735(b)(2) (19 U.S.C. § 1673d(b)(1)) directs the ITC to make a final material injury finding only where the administering authority has made a final affirmative determination pursuant to 19 U.S.C. § 1673d(a). This statutory interpretation becomes conclusively clear upon reading the House Report accompanying the Trade Agreements Act of 1979.

It states in part:

> If the Authority's final determination is negative, the proceeding terminates, as under present law, including any injury investigation being conducted by the ITC. * * * [H.R. Rep. No. 96–317, 96th Cong. 1st Sess. 68 (1979).]

Under the prior law, section 201 of the Antidumping Act of 1921, 19 U.S.C. § 160, the injury phase of an antidumping proceeding did not commence until the Secretary of the Treasury had made what amounts presently to a final determination. To expedite the investigations the Trade Agreements Act permits the injury investigation phase to commence immediately upon a *preliminary* finding of sales at less than fair value by the administering authority while shortening the time within which a final injury determination may be rendered (section 735(b)(2), Tariff Act of 1930, as amended, 19 U.S.C. § 1673d (b)(2)). There is no legislative intent indicating that because an injury investigation is permitted to commence prior to a final affirmative determination by the administering authority that the record made in the injury phase becomes part of the record in the less than fair value phase subject to judicial review simply because the investigations proceeded simultaneously.

The court is not unmindful of the broad and encompassing language that defines the record for review (19 U.S.C. § 1516a(b)(2)). The intent is that the court have a meaningful and comprehensive record before it on review with the express purpose of eliminating the necessity of a *de novo* review in antidumping actions. Congress believes that by affording petitioners greater participation and rights at the administrative level with a full record of proceedings it accomplishes this goal. This is evident from the Senate Report accompanying the Trade Agreements Act which states:

> Section 516A would remove all doubt on whether *de novo* review is appropriate by excluding *de novo* review from consideration as a standard in antidumping and countervailing duty determinations. *De novo* review is both time consuming and duplicative. The amendments made by Title I of the Trade Agreements Act provide all parties with greater rights of participation at the administrative level and increased access to information upon which the decisions of the administering authority and the International Trade Commission are based. These changes, along with the new requirement for a record of the proceeding, have eliminated any need for *de novo* review.

S. Rep. No. 96-249, 96th Cong., 1st Sess. 251, 252 (1979). See also *ASG Industries, Inc.* v. *United States*, 67 CCPA ——, C.A.D. 1237, 610 F. 2d 770 (1979).

However, there is no discernible intent that the record for judicial review consist of unrelated proceedings not raised during the particular administrative action under review. The action for review here is only Commerce's amended Final Determination of Sales at Not Less than Fair Value. This is all the plaintiff seeks in its complaint. There has been no administrative decision regarding injury to a domestic industry that is subject to judicial review under the statute and thus no

claim upon which the court can grant relief. The fact that the ITC investigation concerning melamine from the Netherlands will be in issue in the Italian and Austrian cases is of no consequence to this case. Contrary to the instant action, those cases involve a final negative *injury* determination by the ITC which is subject statutorily to judicial review and which state claims upon which the court may grant relief.

Accordingly, plaintiff's motion to supplement the agency record is denied.

(Slip Op. 81–87)

RHONE POULENC, INC. AND RHONE POULENC S.A., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Before LANDIS, *Judge.*

Court No. 81–1–00079

Memorandum Opinion and Order

[Motion for protective order granted as indicated.]

(Dated September 29, 1981)

Donohue and Donohue (*Joseph F. Donohue* and *John M. Peterson* on the briefs) for the plaintiffs.

J. Paul McGrath, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch (*Velta A. Melnbrencis* on the briefs), for defendant.

LANDIS, *Judge:* This action, instituted pursuant to section 516A (a)(2) of the Tariff Act of 1930 as amended (19 U.S.C. § 1516(a)(2)) seeks judicial review of a less than fair value (LTFV) determination of the United States Department of Commerce, International Trade Administration (Commerce), (45 FR 77498), and a finding of a threat of material injury by the United States International Trade Commission (Commission) (46 FR 176) involving the alleged dumping of Anhydrous Sodium Metasilicate from France.

Plaintiffs move for an order granting access to the following confidential documents: Document Nos. 3(a), 5, 6(b), 7, 8(a), 8(d), 8(f), 8(g), 8(h), 8(i), 8(k), 8(l), 8(m), 8(n), 8(o), 8(q), and 10 listed on List No. 2, part of the administrative record filed with the Court in this case in connection with the United States International Trade Commission's Investigation No. 731–TA–25 (Preliminary); and Document Nos. 1, 2, 5, 6, 8, 9, 12, and 13(a) through 13(e), listed on List No. 2, part of the administrative record filed with this Court in this case in connection with the United States International Trade Commission's Investigation No. 731–TA–25 (Final).

Defendant cross-moves for a protective order and opposes plaintiffs' motion for disclosure of the documents aforementioned [1] on the grounds that plaintiffs have not demonstrated a need for these documents and that disclosure of the confidential business information may have a chilling effect on future Commerce and Commission investigations which rely heavily on confidential business information obtained by questionnaires.

The documents in issue report on the production of domestic producers, as such, the information contained therein is directly related to an assessment of whether there is material injury or a threat of material injury, and, consequently, germane to the major issues of the present action.

Accordingly, upon reading plaintiff's motion to examine confidential documents submitted to the court as part of the administrative record of the proceeding before the International Trade Commission and the opposition and cross-motion for protective order by the defendant United States, and plaintiffs' response to the cross-motion, if is hereby

1. ORDERED that said plaintiffs' motion and said defendant United States' cross-motion be, and the same hereby are granted to the extent indicated and subject to the terms and conditions set forth below; and

2. ORDERED that within fifteen (15) days from the date of entry of this order, the Clerk of this Court shall make available to plaintiffs' outside counsel, Donohue and Donohue, at the offices of the Clerk, for purposes of examining and copying, the following documents:

A. Documents Nos. 3(a), 5, 6(b), 7, 8(a), 8(d), 8(f), 8(g), 8(h), 8(i), 8(k), 8(l), 8(m), 8(n), 8(o), 8(q), and 10 listed on List No. 2, part of the administrative record filed with the Court in this case in connection with the United States International Trade Commission's Investigation No. 731–TA–25 (Preliminary); and

B. Documents Nos. 1, 2, 5, 6, 8, 9, 12, and 13(a) through 13(e), listed on List No. 2, part of the administrative record filed with the Court in this case in connection with the United States International Trade Commission's Investigation No. 731–TA–25 (Final).

3. Counsel for plaintiffs and their immediate office personnel shall neither disclose nor use any of the confidential information for purposes other than this litigation or (subject to continued safeguards to preserve confidentiality) any remand or appeal of this matter. Wherever used in this Order, the term "this litigation" shall be deemed to include remand or appeal resulting therefrom.

---

[1] The Government does not object to the release under protective order of documents 7 and 10 on List No. 2 in Investigation No. 731–TA–25 (Preliminary) or to the release under protective order of documents 1, 2 and 5 on List No. 2 in Investigation No. 731–TA–25 (Final).

4. If in the opinion of plaintiffs' counsel, it becomes necessary to consult with experts independent of the industry involved in evaluating the confidential information, counsel will not contact such experts without first notifying and conferring with counsel for defendant United States concerning the suitability of such experts. If after seven days following notification of defendant's counsel, counsel for the respective parties cannot agree upon a suitable expert, plaintiffs' counsel may submit the matter to the court for resolution. Such experts, once decided upon, shall agree not to disclose any of the confidential information to anyone other than to the counsel who consulted with them or counsel's office personnel actively assisting in this litigation, and then for purposes of this litigation only; and experts so consulted shall first sign a statement submitting themselves to the jurisdiction of the Court of International Trade and such reasonable sanctions as the court may hold appropriate in the event of a breach of the conditions of this protective order by them.

5. In no event shall disclosure of confidential information be made to in-house counsel or other representatives, agents, or employees of plaintiffs or the interested parties.

6. Counsel for plaintiffs shall maintain a record of any and all copies of confidential information made, to whom they are provided and when they are returned. All such copies shall be clearly labelled as containing confidential information and that they are to be returned at the conclusion of this litigation.

7. Any documents, including briefs and memoranda, containing any of the confidential information, which are filed with the court in this case, shall be conspicuously marked as containing information which is not to be disclosed to the public, and arrangements shall be made with the Clerk of this Court to retain such documents under seal, permitting access only to the court, court personnel authorized by the court to have access, and counsel for the parties. Copies of all the foregoing documents, but with the confidential information deleted, shall be filed with the court at the same time that the documents containing the confidential information are filed.

8. Any briefs or memoranda containing confidential information shall be served upon the other parties in a wrapper conspicuously marked on the front "Confidential—to be opened only by (the name(s) of the attorneys handling the case)" and shall be accompanied by a separate copy from which the confidential information has been deleted.

9. Upon conclusion of this litigation or any appeal or remand of this matter, counsel for plaintiffs and the interested parties shall (a) return all copies of the confidential documents obtained under this Order and the record required to be maintained under paragraph 6 above; and (b) destroy all other documents (including documents

held by persons authorized under this Order to have access thereto) containing the confidential information.

(Slip Op. 81–88)

ASG INDUSTRIES, INC., ET AL., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Before LANDIS, *Judge.*

Court No. 76–3–00642

Memorandum Opinion and Order

[Defendant's motion to dismiss is denied. Plaintiffs' cross-motion to suspend is denied.]

(Dated September 29, 1981)

Frederick L. Ikenson for the plaintiffs.

J. Paul McGrath, Assistant Attorney General; *David M. Cohen*, Branch Director; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*David M. Cohen* on the brief), for the defendant.

LANDIS, *Judge:* In this countervailing duty action involving float glass from the United Kingdom defendant has moved this Court to dismiss the case with a judgment ordering the administering authority (Secretary of Commerce) to determine, ascertain or estimate the net amount of the bounties or grants bestowed upon the manufacturer of float glass by the United Kingdom and to levy a countervailing duty equal to such net bounty or grant on such importation of float glass. Plaintiffs have opposed said motion to dismiss and have cross-moved to suspend the subject action under *ASG Industries, Inc., et al.*, Customs Appeal 81–25.

Plaintiff's cross-motion to suspend is denied as moot in view of Customs Appeal No. 81–25 which was decided by the Court of Customs and Patent Appeals on August 21, 1981. This recent appellate ruling is dispositive of defendant's motion to dismiss.

Customs Appeal 81–25 an appeal of an order accompanying Slip Op. 81–34 (April 24, 1981) which had dismissed a related float glass action [1]

[1] The remand in this action (C.A.D. 1238) was issued simultaneously with and for the same reasons stated in C.A.D. 1237 although the Customs Court opinions differed in reasoning. C.D. 4782, the subject of appeal in C.A.D. 1237, found that a bounty or grant was bestowed but affirmed the finding of the Secretary of the Treasury that such bounties or grants did not tend to distort international trade and did not discriminate against the United States' production and sales both foreign and domestic. In C.D. 4788, the subject of appeal in C.A.D. 1238, this Court held that the decision of the Secretary was reasonable in that the Secretary must exercise some discretion in defining what acts of a foreign government confer bounties or grants and that this discretion necessarily involves judgments in the political, legislative or policy spheres. See generally, *United States* v. *Hammond Lead Products, Inc.*, 58 CCPA 129, C.A.D. 1017, 440 F. 2d 102 (1971), cert. denied, 404 U.S. 1005 (1971).

C.A.D. 1237 directly addressed only the distortion to trade theory. However, by implication it also found fault with the discretion theory as to political, legislative or policy sphere judgments.

and remanded said action to the Secretary of Commerce to ascertain the amount of countervailing duties to be imposed. In reversing, the appellate court clarified its decision in *ASG Industries, Inc., et al.* v. *United States*, 67 CCPA ——, C.A.D. 1237, 610 F. 2d 770 (1979), particularly its remand for a trial *de novo* "so that the merits of the issue of the amount of the net bounty herein involved can be fully developed", by stating that the U.S. Court of International Trade should conduct a full development of the net bounty issue including the quantification methodology from the accounting standpoint used in determining the net bounty or grant. The recent decision in Customs Appeal No. 81–25 in pertinent part states:

> * * * It was this court's intention that such full development of the net bounty issue should take place in the court, not that it be turned over with no restraint whatsoever to the administering authority, now the Commerce Department. [Slip Op. at 6.]

It is clear that this Court must conduct a trial *de novo* to determine the amount of net bounty including the method by which it is to be determined, in essence, the amount of countervailing duty to be imposed per unit of float glass.

Accordingly, it is

ORDERED that defendant's motion to dismiss is denied, and, it is

FURTHER ORDERED that plaintiffs' cross-motion to suspend is denied; and, it is

FURTHER ORDERED that the parties submit within thirty (30) days of the entry of this Order an agreed date for the commencement of the trial *de novo* of this action as mandated by the Court of Customs and Patent Appeals.

(Slip Op. 81–89)

TERUMO-AMERICA, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Before RE, *Chief Judge.*

Court No. 78–5–00812

Glass rods (stems)

Some 224,000 pieces of merchandise described on the customs invoice as "glass rods (stems)", dedicated to use as clinical thermometers and incapable of being made into anything else, but which had not attained an individuality as finished or unfinished thermometers, were not properly classified as clinical thermometers under TSUS item 711.34, as modified by T.D. 68–9. Since the glass rods had not reached the state of processing to make them unfinished

thermometers, they were properly classifiable as other tubes or tubing with ends processed, not containing over 95 percent silica by weight, under TSUS item 548.03, as modified.

[Classification overruled; plaintiff's alternative claim and defendant's alternative claim under TSUS item 548.03 upheld.]

(Decided September 30, 1981)

Glad, Tuttle & White (*Robert Glenn White* at the trial and on the briefs), for the plaintiff.

J. Paul McGrath, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*John J. Mahon* at the trial and on the brief; *Melvin E. Lazar*, International Trade Litigation, United States Customs Service, of counsel, at the trial and on the brief), for the defendant.

RE, *Chief Judge:* The question presented in this case pertains to the proper classification of certain merchandise described on the customs invoice as "glass rods (stems)" used in the manufacture of clinical thermometers. It must be noted at the outset that the merchandise, the classification of which is in issue, consists of glass rods or stems in lengths of approximately 120 centimeters, or 48 inches long, which may vary from 3 to 4 inches in length. These rods are exemplified by plaintiff's collective exhibit 1. They are the only merchandise in issue and are not to be confused with plaintiff's collective exhibit 2, which consists of approximately 5-inch pieces that have been cut from the rods after importation.

The imported glass rods were classified by the customs officials as clinical thermometers under item 711.34 of the Tariff Schedules of the United States (TSUS), as modified by T.D. 68–9, and assessed with duty at the rate of 42.5 percent ad valorem.

Plaintiff, a manufacturer of medical products, contests the classification and, consequently, the rate of duty assessed. It claims that the merchandise is properly classifiable as other glass rods or tubes, not processed, not containing over 95 percent silica by weight, under item 540.43, TSUS, as modified by T.D. 68–9, with a rate of duty of only 16 per centum ad valorem. If not classifiable under item 540.43, TSUS, plaintiff claims in the alternative that the merchandise should be classified as tubes and tubing with ends processed, not containing over 95 percent silica by weight, under item 548.03, TSUS, as modified, dutiable at 16 per centum ad valorem; or as articles of glass not specially provided for, other than tubes with ends processed, under item 548.05, TSUS, as modified, and dutiable at 12.5 per centum ad valorem.

Originally, plaintiff also claimed classification under item 540.41 or item 548.01, TSUS, as modified, but those claims were abandoned.

The defendant maintains that the glass rods have been properly classified. However, if it is determined that they are not unfinished thermometers, the defendant contends that they should be classified, alternatively, as other tubes and tubing with ends processed under item 548.03 of the tariff schedules, with duty at 16 per centum ad valorem. This is apparently the first case in which the issue arises under the Tariff Schedules of the United States, rather than under the older tariff acts.

The competing provisions of the tariff schedules read as follows:

[Classified]		
	"Hydrometers and similar floating instruments * * *:	
	Thermometers * * *:	
	Non-recording instruments:	
	Thermometers:	
	Liquid-filled thermometers with the graduations on the tube or on a scale enclosed within an outer shell:	
711.34	Clinical	42.5% ad val."
[Plaintiff's primary claim]		
	"Glass rods, tubes, and tubing, all the foregoing not processed:	
	* * * Containing over 95 percent silica by weight	* * *
540.43	Other	16% ad val."
[Plaintiff's and defendant's alternative claim]		
	"Articles not specially provided for, of glass:	
	Tubes and tubing with ends processed:	
	* * * Containing over 95 percent silica by weight	* * *
548.03	Other	16% ad val."
[Plaintiff's alternative claim]		
548.05	Other	12.5% ad val.

General Headnotes and Rules of Interpretation, TSUS:

"10. *General Interpretative Rules.* For the purposes of these schedules—

* * * * * * *

(h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and *whether finished, or unfinished;*" (Emphasis added.)

It has been established that the merchandise: (1) is in chief value of glass; (2) does not contain over 95 percent silica by weight; (3) is in lengths of approximately 120 centimeters, or 48 inches long; and (4) is used and dedicated to the making of thermometers.

Plaintiff maintains that in customs law, "material" although dedicated to a single use is not to be classified as an unfinished *eo nomine* article unless it has been so advanced as to have attained an individuality which identifies it as one of the named articles. *Bendix Mouldings, Inc.* v. *United States*, 73 Cust. Ct. 204, 205, C.D. 4576, 388 F. Supp. 1193 (1974), *appeal dismissed*, 62 CCPA 109 (1975). See also *Pacific Fast Mail, Inc.* v. *United States*, 63 Cust. Ct. 468, C.D. 3938 (1969). In essence, plaintiff contends that the imported 48-inch-long tubes are not unfinished thermometers, but merely "material" from which thermometers are made by cutting, and by many additional manufacturing processes. In support of its contention, plaintiff states that the importations are not sufficiently advanced for the following reasons:

> (a) as imported, the number of clinical thermometers that can be made from the given shipment cannot be identified,
> (b) extensive and costly further processing is necessary to make the glass rods in issue into finished clinical thermometers,
> (c) the configuration and capillary size of the articles do not preclude classification as glass rods or tubes, and
> (d) heat sealing of the ends is not a processing that advances the articles toward their ultimate use.

Plaintiff submits that the imported glass rods have not attained an individuality as unfinished clinical thermometers; that the imported glass articles are rods and tubes; and that the ends of the glass rods are not "processed" as this term is used in the tariff schedules. The defendant submits that the imported merchandise has attained an individuality which identifies it as unfinished thermometers.

In the *Bendix Mouldings* case, cited by both parties, the merchandise consisted of wood moldings whose surface had been treated in various ways. The moldings were generally imported in 9-foot lengths, and possessed a recessed groove, known as a rabbet, cut into the rear inner edge of the molding. The rabbet was designed to hold a picture or mirror within the frames. After importation, the articles were cut and joined to form picture or mirror frames. As imported, however, the moldings gave no indication of the individual identity or size and shape of any particular frame. Hence, it was held that the imported moldings were not unfinished frames, and were properly classified as other wood moldings under TSUS item 202.66, rather than as picture and mirror frames under TSUS item 206.60. After studying past

case law, Judge Watson concluded that certain useful guidelines had emerged as to when a "material" became an "article":

> "With respect to importations which are in a form dedicated to a certain use but from which the claimed individual articles have not yet fully emerged, to my mind the underlying question is whether the identity of an actual individual article can somehow be discerned." 73 Cust. Ct. at 205.

The court also cited a number of early relevant cases. For example, in *In Re Mills*, 56 F. 820 (S.D.N.Y. 1893), certain lengths of fabric were held to be improperly classified as partly made wearing apparel and were held dutiable as manufactures of cotton. The court stated that" * * * it must at least be made up sufficiently far to enable us to identify the particular article of wearing apparel that is going to be made out ot it." *Id.* at 821.

The "rule of decision" for these cases was articulated in *United States* v. *Buss & Co.*, 5 Ct. Cust. Appls. 110, 113, T.D. 34138 (1914):

> "[M]ost small articles are not produced as individual or separate products of the loom, but for economy of manufacture are first woven 'in the piece.' The rule of decision is therefore established that where such articles are *imported in the piece and nothing remains to be done except to cut them apart* they shall be treated for dutiable purposes as if already cut apart and assessed according to their individual character or identity. This follows, however, *only in case the character or identity of the individual articles is fixed with certainty* and in case the woven piece in its entirety is not commercially capable of any other use." (Emphasis added.)

Under the *Buss* case, therefore, the test to be applied to articles "imported in the piece" is whether "nothing remains to be done except to cut them apart," and if "the character or identity of the individual articles is fixed with certainty." In the case at bar, surely much more remained to be done than merely to cut apart the imported 48-inch-long glass rods before the "identity of the individual [pieces] is fixed with certainty" as unfinished thermometers.

In *Pacific Fast Mail, Inc.* v. *United States*, 63 Cust. Ct. 468, C.D. 3938 (1969), wherein certain "rail" was found not to meet the criteria necessary to be an unfinished article, this court stated:

> "We * * * find that the rail is not unfinished track. The fact that the former is dedicated to use in the construction of track is a helpful, but not the sole, criterion for determining whether it is that article in its unfinished state. *American Import Co.* v. *United States*, 26 CCPA 72, T.D. 49612 (1938); *The Harding Co. et al.* v. *United States*, 23 CCPA 250, T.D. 48109 (1936); *United States* v. *The Harding Co.*, 21 CCPA 307, T.D. 46830 (1933). Does the rail possess the shape, size, and all of the necessary characteristics of unfinished track, *Nyman & Shultz* v. *United States*, 14 Ct. Cust. Appls. 432, 437, T.D. 42060 (1927); is it so far ad-

vanced that it has an individuality which identifies it in its unfinished state as the thing it would be when finished, *Snow's United States Sample Express Co.* v. *United States*, 8 Ct. Cust. Appls. 17, 21, T.D. 37161, (1917); does it have even the 'elementary form and substance' of track so that *it has reached the point in the manufacturing process where it has become that article in 'name and character'*, *Redden & Martin* v. *United States*, 5 Ct. Cust. Appls. 485, 487, T.D. 35147 (1915)?

The importation meets none of the foregoing criteria: the sample rail in evidence is mute but potent witness to the fact that it possesses neither the shape, size, nor other characteristics which would identify it as track; and *the lengthy, detailed steps involved in constructing track from rail cogently illustrate that the latter has not reached the point where it may be considered track in the unfinished state.*

The rail stands in marked contrast to those commodities which this court and our court of appeals have held * * * to be 'unfinished' articles by reason of their being so far advanced toward their final form and shape that their ultimate purpose and use were self-evident." 63 Cust. Ct. at 472–473. (Emphasis added.)

In the present case, it is clear that the imported 48-inch-long glass rods had not "reached the point in the manufacturing process" that they had become "in name and character" clinical thermometers. They had not attained an individuality which identified them as unfinished thermometers, but were the "material" used in the manufacture of clinical thermometers.

The defendant stresses that the imported merchandise is dedicated to use as clinical thermometers and is incapable of being made into anything else. This, however, does not necessarily establish that the imported "material" is to be classified as an *eo nomine* article. It is well established that the mere fact that imported merchandise is dedicated to use in making particular articles or parts does not take the merchandise out of the class of "material." *Bendix*, 73 Cust. Ct. at 205. See also *The Harding Co.* v. *United States*, 23 CCPA 250, T.D. 48109 (1936) (automobile brake lining); *American Import Co.* v. *United States*, 26 CCPA 72, T.D. 49612 (1938) (fishing leader gut); *Overton & Co.* v. *United States*, 85 Cust. Ct. 76, C.D. 4875 (1980) ("Jordan bars").

At trial, plaintiff called Mr. Kum Tanaka, its administrative manager. Defendant's witnesses were Mr. Jonathan Tobelmann, marketing manager for tubing products, Corning Glass Works, and Mr. William Pymm, vice president of Pymm Thermometer Corp., a manufacturer of clinical thermometers.

In addition to plaintiff's collective exhibit 1, illustrative of the merchandise in issue, numerous exhibits (14 for plaintiff and 10 for defendant), were received in evidence. Among the exhibits carefully examined by the court were glass tubing, a variety of thermometers,

and catalogue sheets pertinent to the manufacture of thermometers. The court also examined with care plaintiff's collective exhibit 2, consisting of the approximately 5-inch pieces of tubing that were cut from the glass rods after their importation. From the testimony of record, it is clear that although seven to nine pieces were usually cut from the 48-inch glass rods after their importation, it was not always possible to determine the exact number that could be cut from each rod, nor the type of thermometer for which the glass rods were best suited.

As imported, the 48-inch glass rods, which were shaped in the form of a prism, contained three sides. One side, which had a white back, was longer than the other two which sometimes were equal in length. The ends were sealed in the process of being cut in order to keep out dust and moisture. No scales or markings appeared on the outside of the glass rods at the time of importation.

Mr. Tanaka, who testified that he was aware that the physical characteristics of the imported glass rods differed from other tubing, described the major processes involved in manufacturing the imported merchandise into a finished thermometer. The glass rod is initially inspected for cleanliness and cracks, and is then cut into lengths. Although seven to nine pieces may be cut, Mr. Tanaka testified that "what is ultimately produced as a thermometer cannot be determined." In addition to a loss factor from waste and breakage, he added that "[i]t cannot be readily defined, as far as how many thermometers can be made from any single stem * * * because there are many functions involved in the production of thermometers."

A bulb is then formed in the glass, and then cut in half to create a shoulder for its attachment. The bulb material is then fused onto the stem material. Mr. Tanaka described the function of the bulb in a finished thermometer as the end which will eventually be formed as a cavity for the mercury. He explained that there were different sizes of bulb glass because there were different types of thermometers, i.e., oral, rectal, ovulation and veterinary. The bulb determines the type of thermometer. There is a capillary within the glass that runs the length of the glass. The capillary, contained within the stem material, is the approximate diameter of one hair. When the diameter is constricted, one further reduces the one-hair diameter to approximately one-tenth of that size. The capillary will also determine the type of thermometer.

Mr. Tanaka explained that constriction is the heart of a clinical thermometer which is being designed to measure maximum temperature. When the temperature reaches 98.6 degrees, it remains there until forcibly shaken down. Plaintiff's exhibit 5, the witness said, is a glass tube that illustrates constriction. Mr. Tanaka also stated that

the number of pieces cut from the imported glass rods could be affected by defects in the constriction which would make it impossible to manufacture a clinical thermometer.

After constriction, the thermometer is processed through an alcohol injection machine. The alcohol is poured into the bulb of the thermometer and measured electronically by computer to determine the amount of mercury that will be injected into the stem.

Terumo-America then determines the ultimate size into which the bulb will be cut. The process in forming the bulb or bubble consists of heat sealing the ends and using micrometer adjustments to determine exactly where the thermometer will be cut after it has been injected. The bubble piece is cut and the bubble end of the stem is sealed. Depending upon the thermometer, the bulb will either be inserted into the mouth or rectum. Mr. Tanaka examined collective exhibit 6, consisting of samples of oral and rectal thermometers, and identified the oral thermometer as the one with the longer bubble.

After the bubble is formed, the thermometer is aged in an oven for 24 hours by controlled heat and time adjustments. Terumo-America distills and purifies the mercury that it has purchased by a heat application. At this juncture, the mercury is injected through the open end capillary by vacuum. The end without the bulb is sealed. A calibration process is begun whereby the thermometer is required to have between 106 and 108 degrees of mercury to meet certain required standards of the States of Michigan, Connecticut, and Masssachusetts. Mr. Tanaka said there were no federally mandated standards.

Mr. Tanaka's testimony, which the court finds credible and reliable, fully supports plaintiff's contentions that the merchandise, as imported, was mere "material" dedicated to the making of thermometers. The testimony makes it clear that, even after being cut into 5-inch pieces, before becoming a finished thermometer the imported "glass rods (stems)" must undergo the following additional steps:

(a) Reverse spinning centrifuge
(b) Inspection of constriction
(c) Cut off end by heat applications
(d) Run through a conveyor to pull the mercury down
(e) Heat application
(f) Calibration
(g) Printing
(h) Placement in a baking conveyor to burn ink into the glass permanently
(i) Acid washed
(j) Set checkpoints
(k) Final inspection

Mr. Tanaka concluded that, in view of the many additional necessary manufacturing processes, the merchandise, as imported, i.e., the

48-inch glass rods, had not reached a state of processing for it to be an "unfinished thermometer."

The defendant's first witness, Mr. Jonathan Tobelmann, was familiar with various stages in the production of clinical thermometers. He had visited most of the plants of clinical thermometer manufacturers in the United States, except Terumo-America, Inc., and one other small manufacturer. Upon being shown collective exhibit 1, illustrative of the merchandise in issue, Mr. Tobelmann said that he was familiar with the merchandise, and that Corning had manufactured tubing for the thermometer industry which was very similar to the imported merchandise. He also testified that his company is able to manufacture tubing of the same dimensions, and identified defendant's collective exhibit A as sticks of tubing that Corning sells to clinical thermometer manufacturers in the United States. Its tubing is 37, 45, 52 inches, or a little longer, and can be produced with different diameters and ends sealed or unsealed. Sealing is done to protect the bore from dirt or moisture.

Mr. Tobelmann described plaintiff's collective exhibit 1 as a stick of thermometer tubing, which is the first step in making a clinical thermometer. The witness described how Corning's thermometer is manufactured:

> In manufacturing our own thermometer, in the tubing that I had seen, it is a one-step process. It's a completely automated process where the raw material goes into one end and the finished thermometer tubing is drawn out the other end and is cut to lengths and fire-polished or unfire-polished and then packaged. There are no subsequent steps of putting it all together.

Mr. Tobelmann testified that there were other methods, i.e., the hand method, as well as the semiautomated vertical method, which are still in use in some places in the world.

Defendant's second witness, Mr. William Pymm, in addition to being vice president of Pymm Thermometer Corp., was also associated with Pak Glass Machinery Corp., a manufacturer of specialized equipment for the clinical and industrial thermometer industry. He examined both plaintiff's collective exhibit 1 and defendant's collective exhibit A, which were pieces of Corning glass tubing, and testified that these exhibits looked identical except as to dimensions, the outside dimensions of plaintiff's collective exhibit 1 being thicker. Both exhibits have a prismatic shape, a white enamel backing, a bore, clear glass lens which magnifies the bore, and a sealed end. Mr. Pymm explained that the sealed end signifies that the ends were fire sealed with a flame which prevents dirt or moisture from entering the bore and protects the glass inside.

Although the tariff schedules do not define either a finished or an

unfinished thermometer, both of which are subject to classification under item 711.34 in accordance with General Interpretative Rule 10(h), the *Summaries of Trade and Tariff Information* state the following in Schedule 7, vol. 2 at 181–182 (1970):

> "A typical finished clinical therommeter consists of a glass capillary tube approximately 4 inches long to which is attached a small glass bulb. The opening of the bulb connects with one end of the bore of the tube; the other end of the bore is sealed. Mercury is sealed in the bulb and part of the tube. Magnification properties of the tube, resulting from the prismatic construction of its walls, enables the column of mercury to be read in conjunction with an engraved scale on the tube's surface. An enamel strip, usually white, is embedded in the glass to serve as a contrasting background for the mercury column. Thermometers used in the United States are usually calibrated in degrees and fifths of degrees, Fahrenheit, with a scale ranging from 96° to 106°. Clinical thermometers are made from several varieties of lens clinical tubing.
>
> In use, the bulb end of the thermometer is inserted into a body cavity where heat from the body causes the mercury column to rise until the highest temperature to which the thermometer is exposed is reached. By means of a constriction in the bore of of the tube, the expanded column is prevented from contracting back toward the bulb. Before reuse, the thermometer must be reset by shaking the mercury to a point several degrees below normal body temperature.
>
> Other types of clinical thermometers are those for veterinary use and basal thermometers. The former are used for measuring the temperature of large animals; the latter for ovulation tests. These two types, however, account for an extremely small percentage of clinical thermometers sold in the United States."

Prior to the adoption of the tariff schedules, clinical thermometers were classified under paragraph 218(a) of the Tariff Act of 1930. That paragraph was pertinent to the decision of this court in *Empire Findings Co.* v. *United States*, 57 Cust. Ct. 412, C.D. 2830, 260 F. Supp. 884 (1966) wherein the court reviewed the process of manufacturing a finished thermometer as follows:

> [T]he production of glass clinical thermometers starts with blown or drawn glass tubing or "cane." This is filled with mercury and cut into lengths. The mercury is withdrawn and measured to classify the tube by bore size. A small blister is blown into the tube near one end and the end is pinched off. Bulb tubing is joined to the opening. *A part of the imported merchandise * * * is in the state of advancement now attained.* Subsequently the tube is filled with mercury. The mercury is drawn into the end opposite the bulb and the constriction is put in which keeps the mercury from falling back after removal from the patient's mouth until the instrument is read and shaken down. The constriction properly placed, the mercury is returned by shaking, to the bulb. * * * The

> next operations are for getting gas out of the tube. It is separated from the mercury and driven up to the head, by various methods. Next, the instrument is placed in 160° water to test if the column rises the proper distance from the top and from the bulb. The tube is then sealed and the top chamber removed. *The result is known as a blank.* The blanks are immersed in water at 98° and 106° Fahrenheit, and the column level marked with ink. The blank is tested for presence of air by driving the mercury column to the top. It is coated with wax and engraved with the temperature locations. Scratches through the wax are made which are then marked with acid. It remains to dip in ink for the colored markings on the completed instrument. 57 Cust. Ct. at 415. (Emphasis added.)

In *Empire* the issue was whether certain merchandise was unfinished glass clinical thermometers under paragraph 218(a) of the Tariff Act of 1930, as classified, or glass tubes, rods, canes, and tubing under paragraph 218(b) of that act, as alternatively claimed. In holding the imported merchandise to be unfinished glass clinical thermometers, as classified, the court stated that "[t]he samples, as 'potent witnesses' tell us here that the so-called 'shaped glass capillary tubings' look and are shaped like clinical thermometers and obviously have been *advanced far beyond suitability for any other use.*" *Id.* at 417. (Emphasis added.)

In the present case, at the time of importation the merchandise consisted of 48-inch-long glass rods, represented by plaintiff's collective exhibit 1, and not 6- or 7-inch glass tubes as in *Empire*. Unlike the present case, the merchandise in *Empire*, in addition to having been cut prior to importation, had been "advanced far beyond suitability for any other use." The glass rods here were "material" which required further processing to attain the individuality of the glass tubes in *Empire*, and, as imported, surely were not thermometer "blanks."

According to the United States Tariff Commission's *Report to the President on Investigation No. TEA–1A–1 Under Section 351(d)(2)(5) of the Trade Expansion Act of 1962* (T.C. Publication 90, May 1963, at 10), the manufacture of clinical thermometers has two distinct phases:

> "The first, the manufacture of the thermometer blank, comprises more than 100 operations; the second consists of 25 or more finishing operations involved in making the temperature scale (determined separately for each thermometer because of slight variations in the dimension of the bore of the tubing), engraving, pigmenting, and testing. Until recently, clinical thermometers were manufactured almost entirely by hand. During the last several years, however, a number of the larger producers have, at substantial expense, successfully mechanizep certain of these manual operations."

Unfinished thermometers are also discussed in the *Report*, *supra* at 11, n.2:

> "Unfinished thermometers are known in the trade as blanks. A complete thermometer blank is a blank that has been processed up to but not including calibration, engraving, pigmentation, and testing. An incomplete thermometer blank is a blank that must be further processed before it can be calibrated, engraved, and so forth."

Plaintiff's witness, as well as defendant's witness, Mr. Pymm, testified in detail as to the time, effort, and cost required to process the imported merchandise into thermometers. Although dedicated to the use of making thermometers, much more remained to be done than merely to cut the imported rods and to identify them as unfinished thermometers. Furthermore, although the merchandise may be "part" of a clinical thermometer, it cannot be classified under item 711.34 since that item does not encompass "parts" of clinical thermometers. As mere "material," though dedicated to use as a clinical thermometer, the merchandise, as imported, was not sufficiently advanced or processed to be classified as an unfinished thermometer.

From the foregoing, and upon a careful examination of the imported merchandise as a "potent witness," the exhibits, and the testimony of the witnesses, the court has concluded that the imported merchandise is not an unfinished clinical thermometer. It is, therefore, the determination of the court that it was improperly classified as clinical thermometers under item 711.34 of the tariff schedules.

Having determined that the assigned classification under item 711.34 of the tariff schedules is erroneous, the court will consider whether the imported merchandise falls within any of the alternate provisions claimed. Although classification has been urged under items 540.43 and 548.03, the parties have cited no cases directly in point as to whether the glass rods are tubes or tubing. The tariff schedules do not define tubes, and the *Tariff Classification Study, Explanatory and Background Materials* (1960) fails to shed light on this question. As previously noted, however, the *Summaries of Trade and Tariff Information* describe a clinical thermometer as consisting of "a glass capillary tube" and refers to tubes and tubing. Schedule 7, vol. 2 at 181–182 (1970). In addition, the record contains much supporting testimony which refers to the imported merchandise as "tubing." Mr. Tobelmann of Corning Glass Works not only stated that the imported merchandise was very similar to the "tubing" manufactured by Corning for the thermometer industry, but also that Corning sold clinical thermometer "tubing" to every United States manufacturer of clinical thermometers. There is no question,

therefore, that the original material for a clinical thermometer starts with a "tube." From the testimony of record, and a visual examination of the exhibits, the court concludes, therefore, that the "imported glass rods (stems)" are glass tubes or tubing used in the manufacture of clinical thermometers.

Having determined the imported merchandise to be tubing, the court must also determine whether, for tariff purposes, the ends of the glass tubing have been processed. Plaintiff correctly indicates that neither the tariff schedules nor the *Tariff Classification Study, Explanatory and Background Materials*, Schedule 5 (1960), offers a clear statement of what is meant by the term "processed" in the prefatory headings to items 540.43 and 548.03. Although the ends of the glass were sealed, plaintiff alleges that the ends were not processed, as that term is used in the tariff schedules, since the processing in question must advance the glass rod or tube "to its final, intended use." Instead, plaintiff submits that the ends were sealed "for protection for transportation purposes only."

It is defendant's contention, however, the ends are processed since the flame sealing is done to keep the capillary bore clean to facilitate the insertion of mercury, a necessary element in the use and function of finished clinical thermometers. Mr. Tobelmann, who testified that his company, Corning Glass Works, seals its tubing to protect the bore from dirt or moisture, also testified that the word, "processing," when referring to glass tubing, means "the working of the glass after the tubing is made." In describing the cutting as part of the process in order to make the glass tubing, he recalled the various processes used by Corning:

> In tubing, we take sand and lead, and many other components, and we process that glass, and/or material, and change it into some form, and in that same process, we put the white backing, and other things, and then we cut it. And it's considered to be the same process. And then we could seal it, and that could be another process.

Since plaintiff's witness, Mr. Tanaka, testified that the ends of Corning glass were similar to those of Terumo, and that Terumo's glass contained a white backing, it is reasonable to conclude that the imported merchandise must also have undergone a cutting and sealing process similar to Corning's glass tubing.

It is also relevant to note that the *Tariff Classification Study, supra* at 127, states that item 540.43 "cover[s] glass rods, tubes, and tubing which have not been processed, i.e., the articles have unsmoothed ends and are otherwise unworked."

From the foregoing, the court concludes that the flame sealing of ends of the glass rods or tubing was not merely "for protection for transportation purposes only," but also advanced the merchandise

to its final, intended use as clinical thermometers. Consequently, for tariff purposes, the imported glass rods were glass "tubes and tubing with ends processed."

It is, therefore, the determination of the court that the imported merchandise was erroneously classified as clinical thermometers under TSUS item 711.34, and should be properly classified under TSUS item 548.03, as modified, as glass tubes and tubing with ends processed, not containing over 95 percent silica by weight, with duty at the rate of 16 percentum ad valorem.

Having determined the merchandise is properly classifiable under TSUS item 548.03, as modified, it is unnecessary for the court to consider plaintiff's alternative claim under TSUS item 548.05, as modified.

Judgment will be entered accordingly.

(Slip Op. 81-90)

INTERCONTINENTAL FIBRES, INC., PLAINTIFF *v.* UNITED STATES DEFENDANT

Court Nos. 73-7-01954, 74-5-01287

Memorandum Opinion and Order On Plaintiff's Motion for Rehearing and To Vacate and Set Aside an Order of Dismissal

(Dated October 1, 1981)

WATSON, *Judge:* Plaintiff has moved under Rules 59 and 60 for a rehearing and for relief from the order dismissing these actions for lack of prosecution.

These cases were dismissed for lack of prosecution on August 12, 1981, under Rule 85.[1] That rule provides for the dismissal of suspended

[1] Rule 85. Suspension Disposition Calendar:

(a) Suspension Disposition Calendar. A Suspension Disposition Calendar is established on which an action which was Suspended under a test case shall be placed after the test case is finally determined, dismissed or discontinued.

(b) Time—Notice. An action may remain on the Suspension Disposition Calendar for a period to be established by the judge to whom the action was assigned, or by the judge who decided the test case. This period shall not exceed 18 months from the time the action is placed on the Suspension Disposition Calendar. The clerk shall notify the parties of the date on which the action will be dismissed for lack of prosecution unless removed from the Suspension Disposition Calendar.

(c) Removal From Calendar. An action may be removed from the Suspension Disposition Calendar upon: (1) filing of a complaint, (2) filing of a demand for an answer when a complaint previously was filed, (3) granting of a motion for consolidation pursuant to Rule 42, (4) granting of a motion for suspension under another test case pursuant to Rule 84, (5) filing of a submission for decision upon an agreed statement of facts, (6) granting of a dispositive motion, (7) filing of a request for trial, or (8) granting of a motion for removal.

(d) Dismissal for Lack of Prosecution. An action not removed from the Suspension Disposition Calendar within the established period shall be dismissed for lack of prosecution, and the clerk shall enter an order of dismissal without further direction of the court, unless a motion is pending. If a pending motion is denied and less than 10 days remain in which the action may remain on the Suspension Disposition Calendar, the action shall remain on the Suspension Disposition Calendar for 10 days from the entry of the order denying the motion.

actions which have not been removed from the Suspension Disposition Calendar within the period established by the Court following the final determination of the test case under which they were suspended.

In this instance the decision in the test case of *Intercontinental Fibres, Inc.* v. *United States*, 70/41971, became final on March 17, 1977. In accordance with Rule 14.8 of the Rules of the United States Customs Court, which was the precursor of the present Rule 85, the plaintiff was advised that the actions had to be removed from the Suspension Disposition File on or before September 29, 1977. Thereafter, on plaintiff's motion the Court extended the time to remove the cases until 30 days after the final determination of *Henry Pollack, Inc.* v. *W. M. Blumenthal et al.*, D.C.D.C. Civil No. 77-1177, which was an attempt to litigate the matter in the District Court. The dismissal of that District Court action became final when the Supreme Court denied certiorari on October 1, 1979. *Henry Pollack, Inc.* v. *Blumenthal et al.*, 444 F. Supp. 56 (D.C.D.C., 1977) aff'd mem. 593 F. 2d 1471 (C.A.D.C., 1979), *cert. den.* 444 U.S. 836 (1979).

Accordingly these actions became subject to dismissal 30 days after the denial of certiorari although they were not actually dismissed until August 12, 1981.[2]

Plaintiff argues that the dismissal is void for failure of the Clerk of the Court to comply with Rule 85(b) in not giving the parties notice of the date on which the action was ultimately dismissed. Plaintiff further argues that the dismissal order violated its right to due process of law.

The Court finds no violation of Rule 85 and certainly no deprivation of due process. The initial notice by the Clerk informed the parties of the expiration date of the newly formed suspension disposition file. That is the only necessary notification under Rule 85 and the only notice with due process implications for the simple reason that the first setting of the expiration date is done by the Court itself without motions by the parties and might otherwise remain unknown to them.

If that expiration date is later extended upon motion of the parties they are informed in the resulting order of the new expiration date and additional notice from the Court is not required by Rule 85.

It is reasonable to expect a party to remain aware of the new expiration date established as the result of the granting of its motion. It is unreasonable to expect the Court to issue repeated reminders each time a party obtains an extension of time. If the new date is fixed by reference to the future date of finality of a named action it is

---

[2] Plaintiff mistakenly asserts that these actions were transferred to the so-called *Alcan* suspension disposition file, which expired on April 27, 1981, 30 days after the denial of certiorari in *Cornet Stores* v. *Azie Taylor Morton*, Civil No. 78-3183 (C.A. 9).

entirely proper to expect the party whose rights are subject to that date to maintain a close watch on the named action. Nor is the determination of when an action is disposed of by the Supreme Court a matter in which a party should need the assistance of this Court. Those whose rights hinge on the progress of other actions have the duty to follow those actions closely. This is the general policy of the Federal Rules of Civil Procedure and ought to apply with equal force in this Court. Cf. *Universal Film Exchanges, Inc.* v. *Lust*, 479 F. 2d 593 (C.A. 4, 1973); *Nichols-Morris Corp* v. *Morris*, 279 F. 2d 81 (C.A. 2, 1960); *MCA Inc. d.b.a. MCA Music* v. *Wilson*, 425 F. Supp. 457 (S.D.N.Y. 1977).

The purpose of suspension is not to create a reservoir of future litigation or to preserve actions for last-minute revivals. Its purpose is to encourage disposition in accordance with test cases. Removal from a suspension disposition file is the unavoidable responsibility of the party seeking to avoid dismissal. It does not follow from the fact that these suspension disposition files also serve the interest of Court efficiency that the actions they contain can be immunized from normal considerations of diligence.

The dismissal procedure utilized in these actions does not raise a genuine question of deprivation of due process. The cases cited by plaintiff were all instances of important adverse actions taken without notice to the affected party. These included designation of organizations as "Communist" in *Anti-Facist Committee* v. *McGrath*, 341 U.S. 123 (1951) and the issuance of executions and writs against property in *Coe* v. *Armour Fertilizer Works*, 237 U.S. 413 (1914). Here a party merely seeks an additional reminder of something about which it already had notice. Nor is the expression of the deadline for prosecution of a legal action in terms of the finality of another action comparable to the newspaper notice to trust fund beneficiaries found insufficient in *Mullane* v. *Central Hanover Trust*, 339 U.S. 306 (1950). Here the party is already involved in a specific judicial proceeding, should be well aware of an impending expiration date and is not the victim of an unexpected and diffuse method of notification.

For the above reasons the Court concludes that it should not set aside the dismissal of these cases for lack of prosecution. It is therefore Ordered that plaintiff's motion be denied in all respects.

Judgment of the U.S. Court of International Trade in Appealed Case

SEPTEMBER 30, 1981

APPEAL 80-17.—BORDER BROKERAGE CO., INC. *v.* UNITED STATES.—STEEL REINFORCING BARS—LTFV AND INJURY DETERMINATIONS—DUMPING DUTIES—ANTIDUMPING ACT.—C.D. 4825 AFFIRMED APRIL 16, 1981 (C.A.D. 1262).

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, OCTOBER 15, 1981

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

In the Matter of CERTAIN UNIVERSAL JOINT KITS, COMPONENTS THEREOF, AND TRUNNION SEALS USED THEREWITH	Investigation No. 337–TA–93

Notice of Termination

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation No. 337–TA–93.

SUMMARY: Notice is hereby given that the Commission has granted a motion to terminate the above-referenced investigation.

AUTHORITY: The authority for Commission disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 210.55 of the Commission's Rules of Practice and Procedure (19 CFR 210.55).

SUPPLEMENTARY INFORMATION: The termination is based on a settlement agreement between the complainant in this investigation, Dana Corp., and all remaining respondents, GMB Universal Joints, Inc., GMB Universal Joints (West), Inc., and Naniwa Seimitsu Industry Co. The settlement agreement was published in the *Federal Register* of July 29, 1981 (46 F.R. 38787).

Copies of the Commission action and order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to

5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

By order of the Commission.
Issued: October 5, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN MOLDED-IN SANDWICH PANEL INSERTS AND METHODS FOR THEIR INSTALLATION } Investigation No. 337–TA–99

Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9:00 a.m. on October 19, 1981, in the Dodge Center, Room 201, 1010 Wisconsin Avenue, N.W., Washington, D.C., and the hearing will commence immediately thereafter.

The purpose of the prehearing conference is to review the trial memoranda submitted by the parties, to stipulate exhibits into the record, and to discuss any questions raised by the parties relating to the hearing.

The Secretary shall publish this notice in the Federal Register.

Issued: October 5, 1981.

JANET D. SAXON,
Administrative Law Judge.

Investigation No. 701–TA–81 (Preliminary)

HARD-SMOKED HERRING FILETS FROM CANADA

Notice of Institution of Preliminary Countervailing Duty Investigation and Scheduling of Conference

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened

with material injury, or the establishment of an industry is materially retarded, by reason of allegedly subsidized imports from Canada of hard-smoked herring filets, classified under item 111.80 of the Tariff Schedules of the United States.

EFFECTIVE DATE: September 30, 1981.

FOR FURTHER INFORMATION CONTACT: John MacHatton, Supervisory Investigator (202–523–0439).

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted following receipt of a petition on September 30, 1981, filed by the McCurdy Fish Co., Lubec, Maine. The petition alleges that Canada provides subsidies to firms handling and processing fish, including those that smoke herring, and that, by reason of imports of this allegedly subsidized product, an industry in the United States is being materially injured or threatened with material injury.

Authority. Section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise which is the subject of the investigation by the administering authority (Commerce). Such a determination must be made within 45 days after the date on which a petition is filed under section 702(b). Accordingly, the Commission, on October 2, 1981, instituted preliminary countervailing duty investigation No. 701–TA–81. This investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207) and particularly, subpart B thereof.

Written submissions. Any person may submit a written statement of information pertinent to the subject matter of this investigation to the Commission on or before November 2, 1981. A signed original and nineteen copies of such statement must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data". Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., e.d.t., on October 26, 1981, at the U.S. International Trade

Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact Mr. John MacHatton (202–523–0439) by 5:00 p.m., e.d.t., October 22, 1981. It is anticipated that parties in support of the petition for countervailing duties and parties opposed to such petition will each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by Mr. John MacHatton.

Inspection of petition. The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

By order of the Commission.

Issued: October 2, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN STEEL ROD TREATING APPARATUS AND COMPONENTS THEREOF

Investigation No. 337–TA–97

Approval of Withdrawal of Motion for Temporary Exclusion Order and Denial of Motion for Expedited Consideration

AGENCY: U.S. International Trade Commission.

ACTION: Approval of withdrawal of motion for temporary exclusion order (Motion No. 97–55). Denial of motion for expedited Commission determination on permanent relief before October 30, 1981 (Motion No. 97–54).

SUPPLEMENTARY INFORMATION: Pursuant to section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, the Commission is currently conducting an investigation of alleged unfair acts and unfair methods of competition in connection with the importation or sale of certain steel rod treating apparatus and components thereof. In the course of investigation No. 337–TA–97, complainant Morgan Construction Co. moved for an expedited Commission determination on permanent relief (Motion No. 97–54) and for a temporary exclusion order (Motion No. 97–55).

Notice is hereby given that complainant Morgan Construction Co. has withdrawn its motion for a temporary exclusion order. After reviewing Motion No. 97–55 and the papers submitted in connection therewith the Commission has approved complainant's withdrawal of

its motion. Notice is further given that the Commission has denied complainant's motion for a Commission determination on permanent relief before October 30, 1981 (Motion No. 97–54).

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0375.

By order of the Commission.

Issued: October 1, 1981.

KENNETH R. MASON,
Secretary.

731–TA–38 (Final)

TRUCK TRAILER AXLE-AND-BRAKE ASSEMBLIES AND PARTS THEREOF FROM HUNGARY

Institution of Final Antidumping Investigation and Scheduling of Hearing

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping duty investigation.

SUMMARY: On September 17, 1981, the United States Department of Commerce issued a preliminary determination that there is reason to believe or suspect that truck trailer axle-and-brake assemblies and parts thereof from Hungary are being sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673b). Accordingly, the United States International Trade Commission (hereinafter "the Commission") hereby gives notice of the institution of investigation No. 731–TA–38 (Final) to determine whether an industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise provided for in items 692.32 and 692.60 of the Tariff Schedules of the United States (TSUS). This investigation will be conducted according to the provisions of Part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207), Subpart C, effective January 1, 1980.

EFFECTIVE DATE: September 17, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Abigail Eltzroth, Office of Investigations, U.S. International Trade Com-

mission, Room 337, 701 E Street, NW., Washington, D.C. 20436; telephone (202) 523–0289.

SUPPLEMENTARY INFORMATION: On March 23, 1981, the Commission determined on the basis of the information developed during the course of investigation No. 731–TA–38 (Preliminary), that there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury by reason of imports of truck trailer axle-and-brake assemblies and parts thereof from Hungary, provided for in TSUS items 693.32 and 692.60, which are allegedly sold or likely to be sold at less than fair value. As a result of the Commission's determination, the Department of Commerce continued its investigation into the question of less-than-fair-value sales. The final determination by the Department of Commerce of whether truck trailer axle-and-brake assemblies and parts thereof from Hungary are being, or are likely to be, sold in the United States at less than fair value will be made within 75 days after the date of its preliminary determination, or, in this case, by December 1, 1981.

Written submissions: Any person may submit to the Commission a written statement of information pertinent to the subject of this investigation. A signed original and nineteen (19) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, on or before December 16, 1981. All written submissions, except for confidential business data, will be available for public inspection.

Any submission of business information for which confidential treatment is desired shall be submitted separately from other documents. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information". Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

A staff report containing preliminary findings of fact will be available to all interested parties on November 19, 1981.

Public hearing: The Commission will hold a public hearing in connection with this investigation on December 9, 1981, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.s.t. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.), December 1, 1981. All persons desiring to appear at the hearing and make oral presentations should

attend a prehearing conference to be held at 10:00 a.m., e.s.t., on December 2, 1981, in Room 117 of the U.S. International Trade Commission Building and must file prehearing statements on or before December 4, 1981. For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure Part 207, Subpart C (19 CFR 207), and Part 201, Subparts A through E (19 CFR 201).

The Commission has waived Commission rule 201.12(d), "submission of prepared statements," in connection with this investigation. This rule states that "Copies of witnesses' prepared statements should be filed with the Office of the Secretary of the Commission not later than 3 business days prior to the hearing and submission of such statements shall comply with sections 201.6 and 201.8 of this subpart". It is nevertheless the Commission's request that parties submit copies of witnesses' prepared testimony as early as practicable before the hearing in order to permit Commission review.

This notice is published pursuant to section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20).

By order of the Commission.

Issued: September 30, 1981.

KENNETH R. MASON,
Secretary.

Index

U.S. Customs Service

Treasury decisions:

	T.D. No.
Bonds:	
Control of instruments of International traffic bond	81-265
Rider to private carrier's bonds	81-266
Foreign currencies:	
Certified quarterly rates; October 1 through December 31, 1981	81-269
Daily rates; September 28 through October 2, 1981	81-270
Variances; September 28-30, 1981	81-271
Gas cylinders	81-268
Three-wheel all terrain cycles	81-267

U.S. GOVERNMENT PRINTING OFFICE : 1981 O - 354-809